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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/662,718 09/15/00 WURTZ

T SFN-301RI

EXAMINER

PM92/1011

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GLESSNER, B

ART UNIT

PAPER NUMBER

3635

DATE MAILED:

10/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Best Available Copy

Office Action Summary

Application No.

09/662,718

Applicant(s)

WURTZ ET AL.

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 and 7 is/are allowed.
- 6) ☒ Claim(s) 5, 6, 8-10, 12, 14, 15, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 11, 13 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Reissue Applications

1. Claims 12 and 14 are rejected under 35 U.S.C. 251 as being improperly broadened in a reissue application made and sworn to by the assignee and not the patentee. A claim is broader in scope than the original claims if it contains within its scope any conceivable product or process which would have infringed the original patent. A claim is broadened if it is broader in any one respect even though it may be narrower in other respects.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5, 6, and 8-10 and are rejected under 35 U.S.C. 103(a) as being unpatentable over Crofoot (3,894,368) in view of Tansi (4,202,457).

In regard to claims 5 and 9, Crofoot discloses a floor joist retainer, for use in a concrete foundation formed by pouring concrete into forms, which comprises:

a floor joist retainer body 1 having an open front, closed sides, a back, a bottom, and an open/ removable top 9' (figure 8), and configured to receive and support an end of a floor joist positioned within the floor joist retainer body through the open top and front;

a retaining flange 3 attached to the floor joist retainer body for engagement within the concrete foundation; and

a plurality of nails 6 configured to extend a pointed end into a form. The examiner would like to point out that when Crofoot places his box in the form, the top is attached to the box. Then, after the concrete is poured, the top 9' is removed by the user. Therefore, the top is removable. Crofoot does not specifically disclose that the floor joist retainer body comprises a plurality of nail posts attached to the sides of said floor joist retainer body, wherein each said post is positioned and configured to hold a nail with a pointed end extending into a form. Tansi teaches that it is known to use a plurality of nail posts 48 to hold a box-like member in place. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Tansi's teaching of nail posts into Crofoot's invention, because the nail posts will securely hold the nails in place until the user is ready to install the retainer body. Therefore, the user will not have to take the time to find nails and place them into the holes himself. Since the nails will already be attached to the retainer body, the assembly will be faster and more economical.

In regard to claims 6 and 10, Crofoot in view of Tansi disclose the basic claimed invention, wherein the floor joist retainer body is formed of material to which poured concrete will not adhere, i.e. plastic.

In regard to claim 8, Crofoot in view of Tansi disclose the basic claimed method of positioning and supporting a floor joist within a concrete foundation formed by pouring concrete into forms using a floor joist retainer having a floor joist retainer body. Crofoot in view of Tansi disclose all of the structural features of the floor joist retainer body. These limitations can be seen above in the rejection of claims 5 and 9. Therefore,

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since all of the structural features are disclosed, the method is also obvious in view of Crofoot and Tansi since it merely recites the obvious way to place the body into the concrete foundation. The applicant does not disclose any method step that is out of the ordinary, or that would not have been obvious in view of the disclosures of Crofoot and Tansi.

4. Claims 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crofoot (3,894,368).

In regard to claim 15, Crofoot discloses a floor joist retainer, for use in a concrete foundation formed by pouring concrete into forms, which comprises:

a floor joist retainer body 1 having an open front, closed sides, a back, a bottom, and a removable top, the floor joist retainer body being configured to receive and support an end of a floor joist positioned within the floor joist retainer body through the top and front, the top being attached to the floor joist retainer body when the concrete is poured into the forms and removable after the concrete is poured;

a retaining flange 3 attached to the floor joist retainer body for engagement within the concrete foundation; and

removable means 6 for removably attaching the floor joist retainer body to the forms before the concrete is poured into the forms. Crofoot does not specifically disclose that the body includes at least one cut where the top connects to the sides and back to aid in the removal of the top. The examiner contends that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a cut around Crofoot's top, because the cut will provide a wall area of lesser thickness that will be

easier for the user to cut through when the top is removed. The examiner also contends that this technique is well known in the art.

In regard to claim 17, Crofoot discloses the basic claimed invention, wherein the removable means for attaching the floor joist retainer body to the form comprises a plurality of nails.

In regard to claim 18, Crofoot discloses the basic claimed invention, wherein the floor joist retainer body is formed of material to which poured concrete will not adhere, i.e. plastic.

Allowable Subject Matter

5. Claims 1-3 and 7 are allowed.

6. Claims 11, 13, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. This holding of allowable subject matter is provisional and subject to reconsideration upon receipt of the amended claims to comply with the specifications set forth in 35 U.S.C. 112, second paragraph.

7. The following is a statement of reasons for the indication of allowable subject matter:

Although the prior art references of record disclose some similar features of applicant's claimed invention, they fail to show or teach the limitations of claims 1, 7, 11, 13, and 16. In regard to claims 1 and 7, the references of record fail to show the limitations of claims 1 and 7 in combination with the use of an intermediate structural plate interconnecting the sides and back of the body that is removable after concrete is poured. Although Stanfill et al (5,169,544) teaches the use of structural plates to reinforce a member from the forces of concrete, he does not

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disclose that said plates are removable. Therefore, the examiner can find no proper motivation to combine Stanfill's structural plates with Crofoot's invention. Claims 11 and 16 are also allowable for the reasons set forth above with respect to the structural plate.

With respect to claim 13, the prior art fails to teach the limitations of claim 12 in combination with the use of a plurality of nail posts attached to the side of the floor joist retainer body. For the above reasons, the examiner believes there is no proper motivation to combine the references of record to produce the applicant's claimed invention.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stanfill et al., Barnett, and Marter. Stanfill et al. discloses the use of structural reinforcing members to protect a member from collapsing under the weight of wet concrete. Barnett and Marter disclose box-like structure for forming pockets in concrete to receive the ends of joists or beams.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031. The examiner can normally be reached on Monday-Friday 6:30-5:00 alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



BETH A. STEPHAN
PRIMARY EXAMINER

B.G.
October 5, 2001